

The Honorable Thomas S. Zilly

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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

AT SEATTLE  
CLERK U.S. DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
BY

UNITED STATES OF AMERICA,

Plaintiff,

v.

ONE (1) HECKLER & KOCH,  
MODEL VP70Z, SHORT BARRELED  
RIFLE, SERIAL NUMBER 93512,  
AND  
ONE (1) MAUSER, MODEL M32,  
MACHINEGUN, SERIAL NUMBER  
92749,

Defendants.

ALBERT KWOK LEUNG KWAN,

Claimant.

NO. C07-0254TSZ

**STIPULATED SETTLEMENT**  
**AGREEMENT AS TO CLAIMANT**  
**ALBERT KWOK LEUNG KWAN**  
**and ORDER**  
**APPROVING SETTLEMENT**  
**AGREEMENT**



07-CV-00254-BOND

Plaintiff United States of America, by and through undersigned counsel, and  
Claimant Albert Kwok Leung Kwan ("Claimant"), by and through his attorneys Joseph  
Conte and Eric Stahlfeld, hereby enter into this Stipulated Settlement Agreement on the  
terms and conditions set forth below.

The United States filed its Verified Complaint for Forfeiture In Rem against the  
Defendant Heckler & Koch Model VP70Z, Short Barreled Rifle, Serial No. 93512 and  
associated stock, and the Defendant Mauser Model M32 Machinegun, Serial No. 92749  
on February 16, 2007. Docket #1. In its Complaint, the United States alleged that the  
defendant firearms are subject to seizure and forfeiture pursuant to 26 U.S.C. § 5872 for

**AND ORDER**

Stipulated Settlement Agreement - 1  
U.S. v. Heckler & Koch VP70Z, et. al; Case No. C07-254TSZ

UNITED STATES ATTORNEY  
700 STEWART STREET  
SEATTLE, WASHINGTON 98101  
(206) 553-7970

1 violations of 26 U.S.C. § 5861(d), and pursuant to 18 U.S.C. § 922(a) for violations of  
2 922(o)(1).

3 On April 26, 2007, Claimant Albert Kwok Leung Kwan filed an Answer to the  
4 Verified Complaint for Forfeiture In Rem as to the Defendant firearms. Docket #4. The  
5 United States subsequently returned to Claimant a Mauser Model M32 Machinegun, and  
6 dismissed the claims against that machinegun in the forfeiture action. The civil forfeiture  
7 action was stayed on July 10, 2007, pending resolution of the related criminal matter,  
8 United States v. Kwan, Western District of Washington Case No. CR06-0305TSZ.

9 On March 4, 2011, Albert Kwan filed a Motion for Return of Property in the  
10 related criminal matter United States v. Kwan, Case No. CR06-0305TSZ. The motion  
11 requested return of the Heckler & Koch VP70Z that is subject to the forfeiture action; a  
12 Heckler & Koch VP70M machine pistol; two stocks; an M-14 Machine Gun bearing  
13 serial number 1194208; and an M-14 Machine Gun, bearing serial number 1216175.

14 The M-14 bearing serial number 1194208, including all of its parts, was destroyed  
15 by the ATF pursuant to an administrative forfeiture on April 15, 2009. The M-14 bearing  
16 serial number 126175 was subpoenaed in connection with Mr. Kwan's criminal case on  
17 October 25, 2006. The M-14 bearing serial number 126175 was destroyed by the ATF on  
18 January 20, 2009.

19 The Court consolidated the request for civil relief into this civil forfeiture action by  
20 Minute Order on February 2, 2012. See Docket No. 12, and Docket No. 199 in United  
21 States v. Kwan, Case No. CR06-0305TSZ. On November 21, 2012, Claimant Kwan  
22 moved to Amend his Complaint for Civil relief related to the Motion for Return of  
23 Property.

24 On January 18, 2013, the Court Denied Claimant Kwan's Motion to Amend  
25 leaving only the H&K VP70Z, the H&K VP70M, and the associated stocks at issue. In  
26 its Order the Court identified that Federal Rule of Criminal Procedure 41(g) contains  
27 no waiver of sovereign immunity, and thus monetary damages are not a permitted form of  
28 relief when the items sought have been lost or destroyed citing the decision in Ordonez v.

**AND ORDER**

1 United States, 680 F.3d 1135 (9th Cir. 2012). Further the Court ordered with respect to  
 2 Claimant Kwan's motion to amend his pleading that it lacked the jurisdiction to a claim of  
 3 taking without just compensation, that a Bivens claim was now outside the three year  
 4 statute of limitations, and that a claim under the Federal Tort Claims Act was barred by  
 5 Kwan's failure to exhaust administrative remedies.

### 6 STIPULATION

7 1. The Court has jurisdiction over this consolidated action, the defendant  
 8 firearms, and the parties, pursuant to 28 U.S.C. §§ 1345 and 1355. The Court has venue  
 9 pursuant to 28 U.S.C. §§ 1355(b) and 1395.

10 2. Claimant hereby abandons to the United States of America all interest in  
 11 and rights, interest, or claims to the H&K VP70M and the two stocks. Claimant  
 12 understands and agrees that by entering into this Settlement Agreement, it waives any  
 13 right to litigate further any interest in the H&K Military and two stocks, including, but not  
 14 limited to the right to petition for remission or mitigation.

15 3. The United States agrees to the return and dismissal of the forfeiture action  
 16 related to the H&K VP70Z (without stock). The United States shall not seek forfeiture on  
 17 any basis whatsoever that exists as the date the VP70Z is returned to Claimant. The H&K  
 18 VP70Z shall be turned over to custody of Attorney Eric Stahlfeld.

19 4. The parties acknowledge that this Stipulated Settlement Agreement is made  
 20 as a compromise and is not, and cannot be construed as, an admission of liability or a  
 21 concession of innocence.

22 5. This Stipulated Settlement Agreement represents a full settlement and  
 23 satisfaction of all ownership and possessory claims by Claimant Kwan to the H&K  
 24 VP70M and two stocks, and the two M-14s. This Stipulated Settlement Agreement  
 25 represents a full settlement and satisfaction of all ownership and possessory claims by the  
 26 United States to the H&K VP70Z. The parties shall execute further documents to the  
 27 extent necessary to implement the terms of this Stipulated Settlement.

28 6. Claimant Kwan understands and agrees that this Settlement Agreement does

1 not make him a "prevailing party" in this action, and agrees to waive any and all claims to  
 2 attorney's fees under 28 U.S.C. § 2465. Each party to the Settlement Agreement is to  
 3 bear its own costs and attorneys' fees.

4 7. Claimant Kwan hereby agrees to release and forever discharge the United  
 5 States, its agencies, agents, employees, and officers, from any and all claims, liens,  
 6 demands, obligations, actions, causes of action, indemnifications, damages, liabilities,  
 7 losses, costs and expenses, of any nature whatsoever, known or unknown, past, present or  
 8 future, ascertained or unascertained, suspected or unsuspected, existing or claimed to  
 9 exist, which said Claimant may have had, now has, or may hereafter have, arising out of  
 10 the investigation, seizure, handling, and/or disposition of any of the firearms and stocks  
 11 involved in this consolidated action.

12 8. The United States and Claimant Albert Kwan consent to the dismissal of  
 13 this consolidated action, upon Court approval of this Settlement Agreement.

14 9. It is contemplated that this Settlement Agreement may be executed in  
 15 several counterparts, with a separate signature page for each party. All such counterparts  
 16 and signature pages, together, shall be deemed to be one document.

17 10. The terms of this Settlement Agreement shall be subject to approval by the  
 18 United States District Court for the Western District of Washington, and the Court shall  
 19 retain jurisdiction to enforce those terms.

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1 The parties submit this Stipulated Settlement Agreement to the Court for signature,  
2 having agreed to its terms and consented to the entry of this Stipulated Settlement  
3 Agreement in full satisfaction of the claim of Claimant in this case and further, the  
4 undersigned parties waive any right of appeal.

5 DATED: 2/20/2013

/s/ Francis Franze-Nakamura

6 FRANCIS FRANZE-NAKAMURA  
7 Assistant United States Attorney  
8 Counsel for Plaintiff

9 DATED: \_\_\_\_\_

10 JOSEPH R. CONTE  
11 Counsel for Claimant Albert Kwan

12 DATED: 20 Feb 2013

13   
14 ERIC R. STAHLFELD  
15 Counsel for Claimant Albert Kwan

16 DATED: \_\_\_\_\_

17 ALBERT KWOK LEUNG KWAN  
18 Claimant

13/02/20 09:50 FAX 4256460406

ALBERT K KWAN

01

1 The parties submit this Stipulated Settlement Agreement to the Court for signature,  
 2 having agreed to its terms and consented to the entry of this Stipulated Settlement  
 3 Agreement in full satisfaction of the claim of Claimant in this case and further, the  
 4 undersigned parties waive any right of appeal.

5 DATED: \_\_\_\_\_

6 FRANCIS FRANZE-NAKAMURA  
 7 Assistant United States Attorney  
 Counsel for Plaintiff

8 DATED: 2/20/2013

9 JOSEPH R. CONTE  
 10 Counsel for Claimant Albert Kwan

11 DATED: \_\_\_\_\_

12 ERIC R. STAHLFELD  
 Counsel for Claimant Albert Kwan

13 DATED: 02/20/13

14 ALBERT KWOK LEUNG KWAN  
 15 Claimant

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 AND ORDER  
 Stipulated Settlements Agreement, - 5A  
 U.S. v. Heckler & Koch VP70Z, et. al; Case No. C07-254TSZ

UNITED STATES ATTORNEY  
 700 STEWART STREET  
 SEATTLE, WASHINGTON 98101  
 (206) 533-7970

**ORDER**

This Stipulated Settlement Agreement is hereby APPROVED and its terms are hereby ORDERED. It is further ORDERED that this consolidated action is hereby dismissed *with prejudice. The clerk is DIRECTED to close this case.*

DATED this *26<sup>th</sup>* day of *February*, 2013.

  
HON. THOMAS S. ZILLY  
United States District Court Judge

Presented by:

*s/Francis Franze-Nakamura*  
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